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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/424,431	03/16/2000	JOHN W WONG	287300022USA	7974
7590 08/06/2004				
BRINKS, HOFER, GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610		EXAMINER MENDOZA, MICHAEL G		
		ART UNIT 3731		PAPER NUMBER

DATE MAILED: 08/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/424,431

Applicant(s)

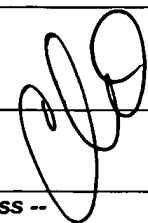
WONG, JOHN W

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 15 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dietz 5485833 in view of Rienmueller et al. 5067494 in further view of Anderson et al. 6436127.

4. Dietz teaches an apparatus for suspending ventilation in a patient and delivering radiation therapy to the patient during suspended ventilation, the apparatus comprising: an apparatus for identifying a specific air flow direction and lung volume of the patient (col. 6, lines 12-16); and an apparatus for administering radiation therapy during the suspension of patient ventilation (col. 2, lines 4-37). It should be noted that Dietz fails to teach an apparatus for suspending patient ventilation.

Rienmueller et al. teaches a device with a common apparatus for suspending patient ventilation (col. 2, lines 12-19 and col. 3, lines 29-51)).

Therefore, it would have been obvious to use the apparatus of Rienmueller et al.

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to assure that substantially no dislocation of organs or of anatomical structure ensues during a measurement or a therapy procedure (col. 2, lines 15-19). It should be further noted that Dietz/Rienmueller fails to teach a first and second operable valve adapted to control inhalation and exhalation of the patient.

However it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a first and a second valve, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Furthermore, it is well known in the art of ventilators to use an inhalation and exhalation valve for controlling breathing. It would have been obvious to one having ordinary skill in the art to close any valve creating a flow to be closed to completely suspend ventilation. It should be further noted that Dietz/Rienmueller fails to teach an abort switch adapted to halt the apparatus and for administering radiation therapy and open a closed one of the first and second selectively operable valves.

Anderson et al. teaches an apparatus for delivering radiation therapy with a common abort switch (col. 12, lines 3-5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the abort switch to allow termination of radiation therapy if the correct parameters are not optimum (col. 13, lines 58-63). Furthermore, Dietz/Rienmueller is fully capable of performing the same function (col. 4, lines 1-5 '494).

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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (703) 308-4304. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



MM
August 4, 2004


GLENN K. DAWSON
PRIMARY EXAMINER